

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 04 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

JUSTICE OKOE SOWAH,

Petitioner,

v.

ALBERTO R. GONZALES,
Attorney General,

Respondent.

No. 04-74409

Agency No. A78-490-998

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 5, 2006^{**}
Seattle, Washington

Before: McKEOWN and CLIFTON, Circuit Judges, and EZRA^{***}, District Judge.

Justice Okoe Sowah petitions for review of the decision by the Board of
Immigration Appeals affirming the decision of the Immigration Judge holding

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

^{***} The Honorable David A. Ezra, United States District Judge for the
District of Hawaii, sitting by designation.

Sowah ineligible for adjustment of status and ordering him removed pursuant to 8 U.S.C. § 1227(a)(3)(D). We deny the petition for review.

The IJ held Sowah inadmissible for adjustment of status under 8 U.S.C. § 1182(a)(6)(C)(ii) on the ground that he falsely claimed U.S. citizenship. That statute declares “[a]ny alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter . . . or any other Federal or State law” to be ineligible for admission. Sowah submitted a counterfeit U.S. birth certificate and misrepresented himself as a U.S. citizen on a passport application. The issuance of passports is governed by federal law. *See* 22 U.S.C. § 212; 22 C.F.R. § 51.2(a). Even if Sowah was unsuccessful in his attempt to obtain a passport and thereby failed to receive a “benefit,” he clearly represented himself as a U.S. citizen for the “purpose” of receiving a passport. *See Toro-Romero v. Ashcroft*, 382 F.3d 930, 936 (9th Cir. 2004). The fact that Sowah’s action may also have constituted a ground for holding him inadmissible under 8 U.S.C. § 1182(a)(6)(C)(i) does not mean that he cannot be cited under subsection (ii) as well. He violated both. Section 1182(a)(6)(C)(ii) is “a non-waivable ground of inadmissibility.” *See Pichardo v. INS*, 216 F.3d 1198, 1201 (9th Cir. 2000). Sowah is thus ineligible for a waiver of inadmissibility, and he is deportable under 8 U.S.C. § 1227(a)(3)(D).

Sowah also argues that the IJ violated his due process rights. An individual can assert a due process violation only regarding those things in which he or she has a constitutionally protected property or liberty interest. No protected liberty interest, and thus no due process right, lies in discretionary relief from deportation. *Munoz v. Ashcroft*, 339 F.3d 950, 954 (9th Cir. 2003) (noting that because “discretionary relief is a privilege created by Congress, denial of such relief cannot violate a substantive interest protected by the Due Process clause”). The due process claim fails.

PETITION DENIED.